

MITSUO ARITA

APRIL 23, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 9881]

The Committee on the Judiciary, to whom was referred the bill (H. R. 9881), for the relief of Mitsuo Arita, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to confer that jurisdiction upon the United States District Court for the Territory of Hawaii to hear, determine, and render judgment upon the claim of Mitsuo Arita, of Hakalau, Territory of Hawaii, for losses suffered when four airplanes which he owned were taken over by the United States Army Air Force at Honolulu on or about January 21, 1942, and retained until April 14, 1945.

Suit upon such claim may be instituted at any time within 1 year after the enactment of this act, notwithstanding the lapse of time or any statute of limitations. Proceedings for the determination of such claim, appeals therefrom, and payment of any judgment thereon shall be in the same manner as in the cases over which such court has jurisdiction under the provisions of section 1346 of title 28 of the United States Code.

STATEMENT OF FACTS

This bill was introduced so as to appropriate the sum of \$4,580.53 to this claimant, but in view of the divergence between the claimant's contention and the Department of the Army's findings, the committee was unable to properly consider the claim, and is merely referring it to the district court of Hawaii for determination.

DEPARTMENT OF THE ARMY,
Washington, D. C., July 13, 1949.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: The Department of the Army is opposed to the enactment of H. R. 1865, 81st Congress, a bill for the relief of Mitsuo Arita.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mitsuo Arita, of Hakalau, Territory of Hawaii, the sum of \$4,580.53. The payment of such sum shall be in full settlement of all claims of the said Mitsuo Arita against the United States on account of losses suffered when four airplanes which he owned were taken over by the United States Army Air Forces, at Honolulu, on or about January 21, 1942, and retained until April 14, 1945, during which time they were improperly cared for, which resulted in the loss of the foregoing amount."

The records of the Department of the Army show that on December 24, 1941, the Civil Aeronautics Administration office in Honolulu, Hawaii, advised all owners of private aircraft that all such aircraft throughout the Territory of Hawaii were to remain grounded and inoperative. On January 16, 1942, that Administration sent to all owners of private aircraft a copy of an order issued by the Office of the Military Governor of the Territory of Hawaii, of the same date, which provided as follows:

"1. a. The local representative of the Civil Aeronautics Administration will take the necessary steps to see that all civil aircraft in the Territory of Hawaii, except those of Pan American Airways, Inc., and Hawaiian Airlines, Ltd., will be concentrated at John Rodgers Airport and rendered incapable of flight.

"b. Those airplanes incapable of being flown to John Rodgers Airport will be shipped there by the owners or be destroyed.

"2. All civilian flying, except that of Pan American Airways, Inc., and Hawaiian Airlines, Ltd., in the Territory of Hawaii is prohibited."

An investigation recently made by the Department of the Army discloses that in compliance with this order the following four airplanes owned by Mr. Mitsuo Arita were flown or shipped to the John Rodgers Airport in Honolulu and there stored in the K-T Flying Service hangar:

Make	Model	Registration No.	Year
Aeronca.....	TC-65.....	NC33768	1941
Piper Cub coupe.....	JA-4.....	NC24605	1939
Porterfield.....	CR-55.....	NC25417	1941
Waco.....	UTC.....	NC13408	1935-36-37

The private planes so concentrated at the John Rodgers Airport were not used by the Armed Forces of the United States, but were merely placed in storage. The owners of the planes were subsequently notified that, if they so elected, the planes would be transported to the west coast of the United States, where they could be

resold. Sometime in 1943 Mr. Arita's four planes were dismantled, crated, and prepared for shipment to the mainland. There is no record that Mr. Arita requested that his planes be shipped to the United States. Nevertheless, in 1945 the Hawaiian Air Depot shipped the four airplanes of Mr. Arita to California. Although he was notified that the planes would be returned to him, he stated that some unknown person at the Hawaiian Air Depot advised him to dispose of the planes on the mainland as some time would be required for their reshipment to Hawaii. It appears that the four planes were sold by Mr. Arita in 1945 while they were on the mainland for the alleged total sum of \$4,300. The Department of the Army has been unable to ascertain the amount of the monetary loss sustained by Mr. Arita, if any, as a result of the grounding of his planes during the war. He has failed to produce any documentary evidence showing the original costs of the planes, their market value at the time they were grounded or the amounts received by him from their sale in 1945. He states that the total replacement cost of the planes in Hawaii in 1943 was \$7,100. A former employee of Mr. Arita states that the planes in question were worth a total of \$6,450 at the time they were grounded. The four planes were inspected on December 9, 1942 by the senior engineering inspector of the Hawaiian Air Depot, United States Army, who estimated the total standing value of said planes to be \$3,400.

The evidence of record does not disclose any negligence on the part of any officer, agent, or employee of the United States in the physical handling of Mr. Arita's planes. The planes were properly cared for after they were grounded. They were stored under cover, were packed carefully for shipment to the continental United States, and at no time were they exposed, unprotected, to the elements. Any depreciation in the physical condition of the planes which may have occurred after they were grounded was due solely to the passage of time.

The following release was voluntarily executed by Mr. Arita on February 20, 1943:

"I Mitsuo Arita, Company B, Three Hundred and Seventieth Engineers, APO 957, am the sole owner of the following aircraft, to wit: NC25417, NC13408, NC24605, and NC33768; that NC13408 pursuant to the order of the military governor was shipped by Government transportation from Hilo, Hawaii, to John Rodgers Airport; that I prepared the airplane for shipment in Hilo by disassembling wings from fuselage; that when said airplane left Hilo the fabric and ribs of the wings were in good condition but that on arrival in Honolulu minor damage had occurred to one wing; that this damage is minor, and I do not intend to present any claim against the Government for same; that no other damage occurred to airplane NC13408; that I have incurred no expenses of any sort or nature for all four of my airplanes with the exception above noted and for which I seek reimbursement against the United States by reason of the impounding order or the events that followed; provided, however, that by the enforced use of K-T Flying Service facilities I have become indebted to said service in the sum of \$15 per plane per month, an expense which I believe should be borne by the Government.

"In view of the foregoing I, Mitsuo Arita, on behalf of myself, my heirs and assigns, hereby release the United States for any claims for

reimbursement for damage suffered to my airplanes to date and for any and all expenses incurred by myself with the sole exception of liability to the K-T Flying Service for hangar expenses."

The action of the military governor in grounding and concentrating all private planes was taken as a matter of urgent military necessity. At that time the United States was at war with Japan. The military situation in the Hawaiian Islands was critical and attack by the Japanese on the islands was expected momentarily. The necessity for the adoption by the military governor of every possible means at his command for safeguarding the security of the islands is readily apparent. Under these circumstances the action of the military governor in ordering private civilian planes to be grounded was directly connected with the military prosecution of the war.

Since the evidence in this case fails to disclose that the claimant has sustained any monetary loss as the result of the grounding of his planes during the war, no factual basis has been presented which would warrant the granting of an award to him. H. R. 1865 would grant relief to the claimant in the amount of \$4,580.53 on the ground that during the period from January 21, 1942, to April 14, 1945, his four planes were improperly cared for by the Government and that by reason of such improper care he sustained a loss in the amount stated. The evidence in this case fairly establishes that the claimant's planes were properly cared for during all the time they were under the military control of the United States. While it is not shown that the planes depreciated in value during the period they were under the military control of the Government, if they did in fact depreciate in value during that time it is reasonable to presume that they would have depreciated as much, if not more, had they remained under the private control of the claimant.

While the war and the resultant measures invoked in the defense of the United States undoubtedly inconvenienced Mr. Arita in the full enjoyment and use of his planes, it must be borne in mind that during such a period of national emergency the property and even the lives of a nation's citizens must be subjected to the paramount effort to repel and defeat the enemy. In the Hawaiian Islands, where one savage enemy attack had been made and others were expected, the military authorities found it necessary to take prompt and stringent steps to establish safeguards against enemy attack and to prevent valuable property from coming into the hands of the enemy. The wartime demands of the United States during the recent war resulted in many instances in personal inconvenience and sacrifice; but for the Government to attempt to compensate everyone who suffered such wartime inconvenience obviously would be impossible. To attempt to provide for such compensation through special legislation, as this bill attempts to do, would commit the Government to an impractical policy. The enactment of the proposed legislation would result in the presentation of a great number of claims similar in principle for the payment of which no legal liability on the part of the United States exists, and the appropriation of public funds for the payment of such claims could not consistently be avoided without discrimination in favor of the present claimant. The Department of the Army, therefore, is obliged to recommend that this bill be not favorably considered.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

GORDON GRAY,
Secretary of the Army.

AFFIDAVIT

CITY AND COUNTY OF HONOLULU,
Territory of Hawaii, ss:

Mitsuo Arita, being first duly sworn on oath, deposes and says: That he is a citizen of the United States of America and a resident of Hakalau, county of Hawaii, T. H.; that he is now a member of the Army of the United States, with the rating of technical sergeant, and identified by serial No. 30103036, Headquarters and Service Company, Thirteen Hundred and Ninety-ninth Engineer Construction Battalion, APO 957, care of postmaster, San Francisco; that on December 7, 1941, he was the owner of the following aircraft:

Make	Model	Registration No.
Aerona	TC-65	NC33768
Piper Cub coupe	J4-A	NC24605
Porterfield	CP-55	NC25417
Waco	UIC	NC13408

That on December 7, 1941, the above-described aircraft were at Hilo Airport on the island of Hawaii; that on that day he was ordered by the United States Army Air Forces, through the Civil Aeronautics Administration, to ground the planes until further orders; that on or about the 15th day of December 1941, he was ordered by the Army Air Forces to have his planes taken away from the airport, and in compliance with said order he had the same removed to Hakalau, island of Hawaii, his home, on or about the 24th day of December 1941, where he had them properly protected and stored; that on or about January 19, 1942, the Army Air Forces ordered him to have the planes brought to John Rodgers Airport at Honolulu for delivery to the Army Air Forces, or, in the alternative, to have the planes destroyed; that on or about January 21, 1942, he had three of the above-described planes flown to Honolulu under escort and had one of them shipped by steamer; that from and after said date the United States Army Air Forces took over full custody and control of the planes, and affiant was assured by them that the planes would be given proper care and attention;

That by letter dated May 26, 1945, the Civil Aeronautics Administration notified affiant that orders theretofore issued requiring civilian aircraft to be concentrated at John Rodgers Airport shall cease to be in effect as of April 14, 1945, and that, as of said date, jurisdiction over all civilian aircraft was being released by military authorities to the Civil Aeronautics Administration, subject to such military orders as may thereafter be issued for reasons of military security.

That for a period of over 3 years, beginning with January 21, 1942, proper care or attention was not given for the protection of said planes, and nothing was done to prevent corrosion or damage to them from the elements;

That on August 19, 1945, affiant went to the Office of the Army Air Forces at Hickam Field, Oahu, to obtain the release and return of his planes, but he was then informed that all of his planes had been shipped by the Army Air Forces to the mainland by mistake; that before being so informed, affiant had agreed to deliver his planes to the Honolulu Vocational School, located at Honolulu aforesaid, and had received a deposit in part payment from a purchaser for one of the planes;

That on or about October 5, 1945, the planes were sold in San Francisco, where they had been shipped to by the Army Air Forces; that due to the poor condition of the planes, resulting from the neglect they suffered during the time they were in the possession and control of the Army Air Forces, and due to the damage incurred during the crating and unauthorized shipping of the planes, it was impossible to obtain the maximum OPA ceiling prices for them; that under the OPA regulations affiant is informed that the sale could have been made for such planes at the total original cost, less depreciation at the rate of 8 percent per year or 2 percent per quarter; that the cost price of the planes are as follows:

Make	Purchase price	Accessories	Other charges	Total cost
Aeronca, TC-65.....	\$1,585	\$214.75	\$479.42	\$2,279.17
Piper Cub coupe, J4-A.....	1,995		¹ 475.00	2,470.00
Porterfield, CP-55.....	1,835		¹ 450.00	2,285.00
Waco, UIC.....	5,985		¹ 600.00	6,586.00
Total.....				13,619.17

¹ Approximately.

That the foregoing sum of \$214.75 for accessories for the Aeronca, TC-65, is made up of the following items:

Dual ignition.....	\$55.00
Brakes.....	62.50
Steerable tail wheel.....	17.25
Navigation lights.....	50.00
Compass.....	30.00
Total.....	214.75

That the foregoing sum of \$479.42 for other charges for the Aeronca, TC-65, is made up of the following items:

Crating for shipment to Hawaii.....	\$100.00
Inland freight to New York.....	100.00
C. & F. charges (water).....	248.35
Insurance.....	10.25
Bank charges.....	15.82
Wires.....	5.00
Total.....	479.42

That affiant was prevented from exercising possession or control over the planes from January 21, 1942, to April 12, 1945, and thereby suffered damages and loss of use; that such damage and loss is equal to the total depreciation of the planes during that time; that based on the OPA allowance of 8 percent per year, affiant's loss is equal to 26 percent for the period of 3 years and 3 months from January 21, 1942, to April 12, 1945; that 26 percent of the total cost is \$3,549.98;

That the total price realized from the sale of the planes by affiant was \$4,300, or \$1,039.55 less than the OPA ceiling price for the planes as of the date of sale; that this loss is directly due to the poor condition of the planes resulting from the neglect they suffered during the time they were in the possession and control of the Army Air Forces and from the improper crating and unauthorized shipping of the planes;

That the total loss incurred by affiant as a result of the taking over of the planes and the retention of their possession and control by the Army Air Forces amounts to \$3,540.98 plus \$1,039.55, or a total of \$4,580.53; that affiant believes that such sum constitutes a just and reasonable claim against the Government; that payment of said sum has not been received by affiant from the Army Air Forces or from any other source.

Further affiant sayeth not.

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